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Message Text

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PAGE 01 KUALA 02685 040214Z
ACTION L-03

INFO OCT-01 EA-10 ISO-00 JUSE-00 CA-01 /015 W
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FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC 3227
DEA HQS WASHDC
INFO AMEMBASSY BANGKOK
AMCONSUL HONG KONG
AMEMBASSY SINGAPORE

C O N F I D E N T I A L KUALA LUMPUR 2685

BANGKOK FOR DEA RO: HONG KONG FOR LEGAL ATTACHE

E. O. 11652: GDS
TAGS: SNAR, PDIP, MY
SUBJ: EXTRADITION: CHUA HAN MOW

REF: A) STATE 079598 (NOTAL), B) KUALA LUMPUR 2180
C) KUALA LUMPUR 1474

1. THE SESSIONS COURT DECISION ON THE GOM APPLICATION FOR THE EXTRADITION OF CHUA HAN MOW TO THE UNITED STATES HAS NOT YET BEEN RENDERED. ALTHOUGH THE MAGISTRATE HAD INDICATED IN MID-MARCH THAT HE WOULD GIVE HIS DECISION ON MARCH 24, HE HAS TWICE DELAYED THE DECISION. ON MARCH 24 THE MAGISTRATE DECLARED THAT HE WAS UNDECIDED ON A CERTAIN POINT OF LAW AND ASKED BOTH THE PROSECUTION AND THE DEFENSE TO SUBMIT SUPPLEMENTAL ARGUMENTS.

2. THIS POINT OF LAW WAS WHETHER A MAGISTRATE IN A PRELIMINARY ENQUIRY CAN RECOMMEND THE PROSECUTION OF A DEFENDENT SOLELY ON THE EVIDENCE OF ACCOMPLICES. ACCORDING TO THE MAGISTRATE, BRITISH, INDIAN AND MALAYSIAN AUTHORITIES SAY THAT SUCH EVIDENCE IS SUFFICIENT TO ALLOW A MAGISTRATE TO RECOMMEND PROSECUTION ONLY IN EXCEPTIONAL CIRCUMSTANCES. SINCE THE CHUA HAN MOW CASE IN THE CONFIDENTIAL

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EASTERN DISTRICT OF NEW YORK RESTS LARGELY ON SUCH ACCOMPLICE EVIDENCE, AND SINCE MALAYSIAN RULES OF EVIDENCE MUST BE FOLLOWED IN EXTRADITION PROCEEDINGS, THE QUESTION NOW IS WHETHER THE CIRCUMSTANCES OF THE CASE ARE EXCEPTIONAL ENOUGH TO WARRANT THE MAGISTRATE'S APPROVAL OF THE GOM APPLICATION FOR EXTRADITION.

3. THE MAGISTRATE FIRST SET MARCH 31 AS THE DATE FOR HIS DECISION,

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BUT THE DEFENSE SUBMITTED PART OF ITS SUPPLEMENTARY ARGUMENT AT THE LAST MINUTE, SO THE DECISION WAS AGAIN POSTPONED, THIS TIME TO APRIL 7.

4. THE ATTORNEY GENERAL HAS SIGNED AN ORDER TO A MAGISTRATE TO ARRANGE A HEARING ON CHUA'S EXTRADITION TO THE U.S. BASED ON THE CASE IN THE NORTHERN DISTRICT OF CALIFORNIA, BUT HAS BEEN WAITING FOR THE JUDGEMENT IN THE FIRST APPLICATION BEFORE HAVING THE ARREST WARRENT ISSUED, FOR FEAR OF COMPLICATING AND POSSIBLY JEOPARDIZING THE FIRST CASE. THE WARRANT WILL BE ISSUED THE SAME DAY THE DECISION IN THE FIRST CASE IS RENDERED, NO MATTER WHICH WAY THAT DECISION GOES.

5. REGARDING PARA 2, REFTEL A, ONLY ONE EMBOFF HAS SUBMITTED TESTIMONY IN THIS CASE, AND THAT WAS TO VERIFY THE AUTHENTICATIONS OF THE USG DOCUMENTS SUBMITTED WITH THE EXTRADITION REQUEST AND TO VERIFY THE EXISTENCE OF THE 1931 US-UK EXTRADITION TREATY AND THE EXCHANGE OF NOTES WHICH EXPLICITLY APPLIED IT TO MALAYSIA. THE DEFENSE ATTORNEY ATTEMPTED TO ASK QUESTIONS ON THE STRUCTURE AND PROCEDURES OF THE US LEGAL SYSTEM, QUESTIONS THE EMBOFF WAS UNABLE TO ANSWER. A SECOND EMBOFF, WHO HAPPENS TO HAVE A LAW DEGREE, AGREED TO ANSWER THESE QUESTIONS TO THE BEST OF HIS ABILITY IN THE MAGISTRATE'S CHAMBERS, BUT HE DID NOT APPEAR IN COURT.
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